
United States
Circuit Court of Appeals

For the Ninth Circuit.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF LOS ANGELES, a cor-
poration,

Appellant,

vs.

R. M. CRAWFORD, Trustee in Bankruptcy of the
Estates of Maxfield-Wilton & Associates, Inc.,
a Corporation, Debtor, Residential Income
Properties, Inc., a Corporation, Subsidiary
Debtor, and Wilton-Maxfield Management Com-
pany, a Corporation, Subsidiary Debtor; MAX-
FIELD-WILTON & ASSOCIATES, INC.,
RESIDENTIAL INCOME PROPERTIES,
and WILTON-MAXFIELD MANAGEMENT
COMPANY, ~~and SECURITIES AND EX-
CHANGE COMMISSION,~~

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,

Central Division

FILED

AUG 12 1940

United States

Circuit Court of Appeals

For the Ninth Circuit.

COAST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF LOS ANGELES, a cor-
poration,

Appellant,

vs.

R. M. CRAWFORD, Trustee in Bankruptcy of the
Estates of Maxfield-Wilton & Associates, Inc.,
a Corporation, Debtor, Residential Income
Properties, Inc., a Corporation, Subsidiary
Debtor, and Wilton-Maxfield Management Com-
pany, a Corporation, Subsidiary Debtor; MAX-
FIELD-WILTON & ASSOCIATES, INC.,
RESIDENTIAL INCOME PROPERTIES,
and WILTON-MAXFIELD MANAGEMENT
COMPANY, and SECURITIES AND EX-
CHANGE COMMISSION,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Agreed Statement of Case on Appeal.....	2
Certificate of Referee on Petition to Re- view	51
Conclusions of Law.....	32
Decision, Memorandum of.....	17
Exhibits for Trustee:	
1—Letter dated July 31, 1937.....	36
2—Letter dated August 13, 1937.....	39
3—Escrow Instructions	40
4—Letter dated August 21, 1937.....	44
6—Six cancelled checks	45
Findings of Fact and Conclusions of Law...	29
Notice of Appeal.....	55
Notice of Partial Payment of Debt.....	13
Objection to the Claim of Coast Federal Savings and Loan Association of Los Angeles	15
Order Disallowing Proof of Debt.....	33
Statement of Points to be relied upon by Appellant	57

	Page
Proof of Debt.....	4
Deed of Trust.....	9
Note and Guarantee.....	7
Appeal:	
Designation of Contents of Record on.....	65
Notice of	55
Statement of Points on (Circuit Court of Appeals)	65
Statement of Points on (District Court).....	57
Attorneys of Record, Names and Addresses of..	1
Certificate of Clerk to Transcript of Record.....	63
Designation of Contents of Record on Appeal..	65
Names and Addresses of Attorneys of Record..	1
Statement of Points on Appeal (Circuit Court of Appeals)	65
Stipulation and Order Extending Time to Docket Appeal	60
Stipulation and Order Extending Time to Docket Appeal	61
Stipulation and Order Extending Time to Docket Appeal	63

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

CRAIL, CRAIL and CRAIL,
J. SHEARER, Esq.,
307 W. Eighth Street,
Los Angeles, California.

For Appellees:

R. M. Crawford, Trustee,
WM. M. RAINS and
FRANCIS F. QUITTNER,
WM. M. RAINS, Esq.,
Citizens National Bank Bldg.,
Los Angeles, California.

Debtors and Subsidiary Debtors,

CALVIN L. HELGOE, Esq.,
715 L. A. Stock Exch. Office Bldg.,
Los Angeles, California.

In the District Court of the United States for
the Southern District of California, Central
Division

No. 32,825-J

In the Matter of
MAXFIELD-WILTON & ASSOCIATES,
INC., a corporation,
Debtor.

In the Matter of
RESIDENTIAL INCOME PROPERTIES,
INC., a corporation,
Subsidiary Debtor.

In the Matter of
WILTON-MAXFIELD MANAGEMENT
COMPANY, a corporation,
Subsidiary Debtor.

AGREED STATEMENT

(Pursuant to Rule 76 of Rules of Civil Procedure)

Pursuant to Rule 76 of Rules of Civil Procedure for the District Courts of the United States, undersigned counsel for the respective parties hereto agree that the following is a correct statement of the case:

That on August 11, 1938, debtor, Maxfield-Wilton & Associates, Inc., a corporation, filed its Petition for Relief under Section 77B of the Bankruptcy Act in the District Court of the United States in and for the District of Nevada, and that an order granting the same and continuing the debtor in

possession was made by said Court on August 11, 1938; that on August 22, 1938, Petitions for Relief of the subsidiary debtors, Residential Income Properties, Inc., a corporation, and Wilton-Maxfield Management Company, a corporation, were filed in said Court and that respective orders were made by said Court granting said petitions and continuing the debtors in possession; that on September 26, 1938, said proceedings were, by order of said District Court of the United States in and for the District of Nevada, transferred to the District Court of the United States for the Southern District of California, Central [1*] Division, and that thereafter all proceedings in said case were had in said District Court of the United States for the Southern District of California, Central Division; that on the 2nd day of November, 1938, said Court made its order appointing R. M. Crawford and E. K. Hoak as trustees of said debtor and subsidiary debtors, but on June 10, 1939, made its order continuing as of July 1st, 1939, R. M. Crawford as sole trustee; that on the 28th day of December, 1938, said Court made its order requiring all proofs of debt against said debtor and subsidiary debtors to be filed with the trustees on or before February 13, 1939; that on the 20th day of February, 1939, said Court made its order of General Reference referring all matters (with specific exceptions immaterial hereto) in said

*Page numbering appearing at foot of page of original certified Transcript of Record.

case to Honorable Benno M. Brink, Referee in Bankruptcy of said Court; that on the 10th day of February, 1939, appellant filed with the Trustees its Proof of Debt, which reads as follows:

(Style of Cause)

“PROOF OF DEBT

State of California,
County of Los Angeles—ss.

At Los Angeles in the said Southern District of California, on the 9th day of February, 1939, came Irwin Kellogg of Los Angeles in the County of Los Angeles, in said District of California, and made oath and says:

That he is secretary of Coast Federal Savings and Loan Association of Los Angeles, a corporation incorporated under the laws of the United States of America, and carrying on business at Los Angeles, County of Los Angeles, State of California, and that he is duly authorized to make this Proof of Debt.

That the said Wilton-Maxfield Management Company, formerly known as Wilton-Maxfield-Wright & Company, one of the above named subsidiary debtors, whose petition for relief under Section 77 B of the Bankruptcy Act was approved, was at and before the filing of the petition, and still is, justly and truly indebted to said Coast Federal Savings and Loan Association of Los Angeles in the sum of \$5,754.33, together with interest thereon

at the rate of 6% per annum from the 15th day of June, 1938; that said indebtedness was created by [2] reason of the guarantee by said Wilton-Maxfield-Wright & Company of payment of a note of one Joseph Honey and that a true copy of said note and guarantee, endorsed upon said note, is attached hereto and made a part hereof as if the same were herein fully set forth; that the said sum of \$5,754.33, together with interest thereon at the rate of 6% per annum from the 15th day of June, 1938, is the balance owing under said note and is now wholly due and owing by reason of the acceleration in pursuance to the terms of said note of the entire indebtedness by said Coast Federal Savings and Loan Association of Los Angeles; that said note is secured by a Deed of Trust upon the following described property:

Lot Three (3) in Block Three (3) of the West Adams Heights, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 2 Pages 53 and 54 of Maps, in the office of the County Recorder of said County, except the South 30 feet of the East 15 feet thereof,

and a true copy of said Deed of Trust is attached hereto and made a part hereof; that in addition to the said principal and interest due upon said note, there is also due under said Deed of Trust, and said Coast Federal Savings and Loan Association of Los Angeles claims a lien under said Deed of Trust,

of said *princiapl* and interest and the sums hereinafter set forth, the sum of \$100.00 advanced for expenses of its attorneys by reason of proceedings purporting to affect the powers and rights of said Coast Federal Savings and Loan Association of Los Angeles and its Trustee, Jacob Shearer, under said Deed of Trust, together with interest upon said sum of \$100.00 from the 17th day of September, 1938, at the rate of 7% per annum, a liability incurred by said Coast Federal Savings and Loan Association of Los Angeles for reasonable attorney's fees of its attorneys, now estimated to be \$500.00, the sum of \$25.00 paid to H. V. Johnson, appraiser used as an expert witness in said proceedings, together with trustee's fees and costs in the sum of \$48.91, and together with such additional advances as Coast Federal Savings and Loan Association of Los Angeles may hereafter make in pursuance to the terms of said Deed of Trust.

That said additional sums claimed over and above said principal and interest [3] are claimed herein only as a lien upon said real property, unless said Wilton-Maxfield-Wright & Company has assumed the indebtedness under said Deed of Trust.

That no part of said debt has been paid; that except as hereinabove set forth, no note or other evidence of indebtedness has been received for said indebtedness; that there are no set-offs or counter-claims to the same and that deponent has not, nor has any person by its order, or to its knowledge or

belief, for its use had or received any security for said debt whatsoever, other than the security above mentioned. Claimant avers that every part of the obligation herein sought to be proved is free from usury as defined by the laws of the State of California, where said debt was contracted.

IRWIN KELLOGG

Secretary of Coast Federal
Savings and Loan Association
of Los Angeles,
Creditor.

Subscribed and sworn to before me this 9th day
of February, 1939.

MILDRED HOUSE,

Notary Public in and for said
County and State”

That the following note and guarantee were attached to said Proof of Debt:

“INSTALLMENT NOTE—INTEREST
INCLUDED

\$6300.00 Los Angeles, California, August 11, 1937

In installments and at the times hereinafter stated, for value received, I promise to pay to the Coast Federal Savings and Loan Association of Los Angeles a corporation, or order, at its office in the City of Los Angeles, California, the principal sum of Sixty-three hundred 00/100 Dollars, with interest from date on unpaid principal at the rate

of six per cent per annum; principal and interest payable in monthly installments of Sixty 00/100 Dollars on the 15th day of each and every month, beginning on the 15th day of October, 1937 and continuing until said principal and interest have been paid. There shall be an additional payment of Three hundred (\$300.00) Dollars due on the principal of this note on September 15, 1937. [4] Each payment shall be credited first on interest then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited. Should default be made in payment of any installment when due the whole sum of principal and interest shall become immediately due at the option of the holder of this note. The Beneficiary agrees to accept additional payments of \$100.00, or multiples thereof, or payment in full at any interest paying date, provided the undersigned pays 90 days' unearned interest as a bonus. Principal and interest payable in lawful money of the United States. If action be instituted on this note I promise to pay such sum as the Court may affix as attorney's fees. This note is secured by Deed of Trust to Title Guarantee and Trust Company, a California corporation.

JOSEPH HONEY

August 12th 1937

For value received, we hereby guarantee payment of the within note, and waive protest and notice of protest.

WILTON, MAXFIELD, WRIGHT
AND COMPANY

HUGH WILTON

Pres.

ERNEST F. WRIGHT

Secy.”

That the material parts of the Deed of Trust, the whole of which was attached to said Proof of Debt, are as follows:

“DEED OF TRUST

This Deed of Trust, made this 11 day of August 1937, between Joseph Honey, a single man, also known as Joseph A. Honey, herein called Trustor, Title Guarantee and Trust Company a Corporation, of Los Angeles, California, herein called Trustee, and Coast Federal Savings and Loan Association of Los Angeles a Corporation, of Los Angeles, California, herein called Beneficiary, Witnesseth: That Trustor grants to Trustee in Trust, with power of sale, that property in Los Angeles County, California, described as:

Lot 3 in Block 3 of the West Adams Heights, as per map recorded in Book 2, [5] Pages 53 and 54 of Maps, in the office of the County Recorder

of said County. Except the south 30 feet of the east 15 feet thereof.

Together with all buildings and improvements now or hereafter placed thereon, and the rents, issues and profits therefrom. It being understood and agreed that all classes of property attached or unattached used in connection therewith shall be deemed fixtures.

* * * * *

A. To protect the security of this Deed of Trust, Trustor agrees:

* * * * *

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

4. To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all incumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such

extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at seven per cent [6] per annum.

B. It is mutually agreed that:

* * * * *

5. Upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary shall be entitled and may and is hereby authorized, without notice, and irrespective of whether declaration of default has been delivered to Trustee and without regard to the adequacy of the security for the indebtedness secured hereby, either personally or by attorney or agent, without bringing any action or proceeding, or by receiver to be appointed by a court, to enter into possession and hold, occupy, possess and enjoy the said property, make, cancel, enforce or modify leases, obtain and eject tenants and set or modify rents and terms of rents, and to take, receive and collect all or any part of the rents,

issues and profits thereof and, after paying such costs of maintenance and operation of said property as it in its judgment may deem proper, to apply the balance upon the entire indebtedness then secured hereby, the rents, issues and profits of said property being hereby assigned to Beneficiary as further security for the payment of such indebtedness; and the acceptance of such rentals, issues and profits shall not constitute a waiver of any other right which Trustee or Beneficiary may enjoy under this deed or under the laws of California. The receipt and application by said Beneficiary of all such rents, issues and profits, pursuant hereto, after execution and delivery of said Declaration of Default and Demand for Sale or during the pendency of Trustee's Sale proceedings hereunder, shall not cure such breach or default, nor affect said sale proceedings or any sale made pursuant thereto, but such rents, issues and profits, less all costs of operation and maintenance, when received by Beneficiary, shall be applied in reduction of the entire indebtedness from time to time secured hereby.

6. Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default [7] and of election to cause to be sold said property, which notice Trustee shall cause to be duly filed for record. Beneficiary also shall

deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

* * * * *

JOSEPH A. HONEY
JOSEPH HONEY”

Said Deed of Trust was endorsed as recorded August 19, 1937, in Book 15169, Page 239, Official Records, Los Angeles County, California; that on June 28, 1939, pursuant to petition of appellant, the said Court made its order allowing appellant to proceed with the sale of the real property mentioned in the said Deed of Trust and to that extent set aside the restraining order as it affected appellant; that thereafter on July 17, 1939, appellant filed with said Trustee, R. M. Crawford, a Notice of Partial Payment of Debt, reading as follows:

(Style of Cause)

“NOTICE OF PARTIAL PAYMENT OF DEBT
To R. M. Crawford, Trustee of the above named Debtors:

You will please take notice that the real property described in the Deed of Trust, a true copy of which was attached to the claim of the undersigned creditor, was, on the 15th day of July, 1939, sold under the powers and provisions of said Deed of Trust and the proceeds of said sale, in the sum of Three Thousand Seven Hundred Seventy-eight Dollars

and Twenty-four cents (\$3,778.24) was credited to the debt of the undersigned creditor as follows:

Account of costs as allowed by the Court	\$ 48.91
Account of attorney's fees as allowed by the Court.....	350.00
Account interest 6-15-38 to 7-15-39 at 6% of \$5754.33	460.44
Account principal	2918.89
	<hr/>
	\$3778.24

The balance now owing upon said debt is Two Thousand Eight Hundred Thirty-five Dollars and Forty-four Cents (\$2,835.44), together with interest thereon [8] at the rate of six percent (6%) per annum from the 15th day of July, 1939, together with such sum as the Court may affix as attorney's fees, as in said note provided.

Dated July 17th, 1939.

COAST FEDERAL SAVINGS AND
LOAN ASSOCIATION OF LOS
ANGELES

By IRWIN KELLOGG

Secretary
(Creditor)

CRAIL, CRAIL & CRAIL

By J. SHEARER

Attorneys for Coast Federal
Savings and Loan Association
of Los Angeles, Creditor."

That on October 9, 1939, Trustee filed his objections to appellant's claim, reading as follows:

(Style of Cause)

“OBJECTION TO THE CLAIM OF COAST
FEDERAL SAVINGS AND LOAN ASSO-
CIATION OF LOS ANGELES

Comes now R. M. Crawford, duly qualified and acting Trustee in the above entitled matters, and objects to the claim of Coast Federal Savings and Loan Association of Los Angeles on file herein in the sum of Two Thousand Eight Hundred Thirty-five and 44/100 Dollars (\$2,835.44), upon the following grounds, to-wit:

I.

That this estate is not indebted in any amount whatsoever to said claimant.

II.

That any alleged agreement of guaranty by Wilton-Maxfield, Wright & Company of the payment of the note in question is ultra vires.

III.

That the officers who endorsed the promissory note of Joseph Honey reportedly guaranteeing payment of said note were wholly without authority to execute such guarantee. [9]

IV.

That the alleged amount claimed by the claimant to be a deficiency upon said note does not represent

the actual value of said property. That the actual value of said property is far in excess of the amount of the note and there is no deficiency upon said note.

V.

That said claimant has been fully paid by reason of the foreclosure of the property out of which the deficiency arose.

VI.

That there is no liability for a deficiency to said claimant as the Deed of Trust and Note upon which the claim is based was given to secure payment of the balance of the purchase price of real property under the provisions of Section 580 (b) of the Code of Civil Procedure of the State of California.

Wherefore, Your objecting Trustee prays that said claim be disallowed.

Dated at Los Angeles, California, this 5th day of October, 1939.

R. M. CRAWFORD

Trustee

WILLIAM M. RAINS and

FRANCIS F. QUITTNER

By: WM M. RAINS

Attorneys for Trustee''

And thereafter, following a hearing, said Referee, Honorable Benno M. Brink filed his memorandum of decision, reading as follows:

(Style of Cause)

“MEMORANDUM OF DECISION

This is a proceeding under Chapter X of the Bankruptcy Act. Prior to the commencement of the proceeding and on or about August 11, 1937, one of the subsidiary debtors, Wilton-Maxfield Management Company, then known as Wilton-Maxfield Wright & Company, entered into negotiations with Coast Federal Savings and Loan Association of Los Angeles for the purchase of a parcel of real property in Los Angeles. The negotiations were thereafter consummated but for reasons of its own the subsidiary debtor directed that the conveyance of the real property be made to Joseph Honey. As part of the transaction Honey, [10] at the request of the subsidiary debtor, signed a note in favor of Coast Federal Savings and Loan Association for the unpaid portion of the purchase price and also executed a deed of trust on the property in question as security for the note. The evidence clearly shows that Honey had no real interest in the property and that he took title thereto only as a “dummy” for the subsidiary debtor and that this was known to the Coast Federal Savings and Loan Association at the time the deal was made. At the time the note was signed and as a part of the entire trans-

action the subsidiary debtor guaranteed the payment of the note by making this endorsement thereon: 'For value received we hereby guarantee payment of the within note and waive protest and notice of protest.' The note itself, among other things, recited: 'This note is secured by deed of trust to Title Guarantee and Trust Company, a California corporation.' After the commencement of this proceeding an order was secured herein restraining the Coast Federal Savings and Loan Association from foreclosing its aforesaid deed of trust. Thereafter, on February 10, 1939, the Coast Federal Savings and Loan Association filed its claim in this matter on the aforesaid guaranty. The said claim was for \$5,754.33, the then unpaid balance on the aforesaid note, together with interest thereon. Thereafter the claimant secured an order in this proceeding vacating the aforesaid restraining order and authorizing it to proceed with its foreclosure. After the foreclosure was completed the claimant filed, on July 17, 1939, a notice of partial payment of its claim in which it alleged that the sum of \$3,778.24 had been realized from the foreclosure sale and that of this sum \$2,918.89 had been credited on the principal sum of the note, leaving a balance unpaid of \$2,835.44, together with interest thereon.

Thereafter the Trustee filed objections to the claim of the Coast Federal Savings and Loan Association upon these grounds: (1) That this estate

is not indebted; (2) That the agreement of guaranty was ultra vires; (3) That the officers of the subsidiary debtor who executed the guaranty were without authority so to do; (4) That there is no unpaid deficiency on the note for the reason that the actual value of the property was in excess of the amount of the note; (5) That the claimant has been fully paid by reason of its [11] foreclosure; and (6) That there is no liability here for a deficiency by reason of the provisions of section 580b of the Code of Civil Procedure of the State of California.

I am satisfied that the second and third grounds of objection are not well taken but that the claim here involved must be disallowed on the remaining grounds urged by the Trustee.

For the sake of brevity I shall discuss here only the sixth ground of objection for the reason that I feel that in itself it states a complete defense to the claim here under consideration.

Section 580b of the Code of Civil Procedure of the State of California reads as follows:

‘No deficiency judgment shall lie in any event after any sale of real property for failure of the purchaser to complete his contract of sale, or under a deed of trust, or mortgage, given to secure payment of the balance of the purchase price of real property.’

Clearly this section absolutely prohibits a deficiency judgment **AGAINST A PURCHASER**

under a deed of trust given to secure the payment of the balance of the purchase price of a parcel of real property. In my opinion the subsidiary debtor in this case was in reality and in fact the purchaser in the transaction which is here under consideration, and for this reason alone I feel that the claim here asserted must be disallowed. However, the claimant asserts that the subsidiary debtor was in fact a guarantor and that Section 580b does not prohibit a judgment after foreclosure of a deed of trust against one who has guaranteed the payment of the balance of the purchase price of a parcel of real property. With this I cannot agree.

Those of us who lived through the dark years of the depths of the depression know full well the reason for the enactment of Section 580b. We remember that in those years there was practically no market for distressed real estate and that frequently one who had sold real property and had taken a deed of trust or mortgage thereon as security for the balance of the purchase price foreclosed his lien and, because there were no substantial bidders at the sale, bid the property in at his own price thereby enabling him (1) To retain everything which had been paid on the purchase price; (2) To recover the identical [12] property which he had sold; and (3) To still have a cause of action for a substantial portion of the original purchase price. It was generally felt that this allowed the seller to unjustly enrich himself at the

expense of those with whom he had dealt in the sale of the property. To remedy the situation the Legislature enacted Section 580b and something of the temper of the legislators, in dealing with the problem, may be gathered from the cryptic language which they employed in framing the section, to-wit: 'No deficiency judgment shall lie in any event.' They did not say: 'No deficiency judgment shall lie AGAINST THE PURCHASER', but they used the sweeping and all embracing words 'IN ANY EVENT.' To my mind this clearly prohibits a judgment either against principal or guarantor for a deficiency after a sale of real property under a deed of trust given to secure the payment of the balance of the purchase price of a parcel of real property. If Section 580b allowed the seller of real property, after the foreclosure of his trust deed or mortgage, to still have a cause of action against a guarantor, he would still be in a position, as I see it, to unjustly enrich himself at the expense of the other parties to the transaction.

Looking at the situation from an equitable standpoint, there appears to be no reason, in the light of the facts in this case, why we should allow the claim which is here presented. The original purchase price on August 11, 1937, was \$7,000.00. At the time of the foreclosure on July 15, 1939, the unpaid principal balance was \$5,754.33. I find from the evidence that at that time the fair market value of the property was \$7,250.00. It would appear,

therefore, that by the foreclosure of the property the original purchase price was fully satisfied.

The decision here made does not mean that the guaranty in this case was without any effect whatsoever. If the subsidiary debtor was in fact the guarantor and not the real purchaser the claimant could have stood on the original claim which it filed in this case. It did not have to foreclose, but if the original claim had been allowed to stand the estate, on payment of the claim, would have been entitled to an assignment of the trust deed from the claimant. This the claimant has now made impossible by its foreclosure, and having elected to [13] foreclosure, it has brought itself, as I view it, within the provisions of Section 580b.

I feel that the decision here announced is fully supported by the law and the decisions of the State of California.

Section 2809 of the Civil Code of the State of California, as it stood in 1937, when the guaranty here involved was given, provided:

‘Obligation of guarantor cannot exceed that of the principal. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.’

If we were to hold that a guarantor is liable in cases where the principal is free of liability under

Section 580b we would be making the obligation of the guarantor more burdensome than that of the principal.

Section 2810 of the Civil Code of the State of California, as it stood in 1937, provided:

‘A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.’

If the effect of Section 580b is limited to the purchaser I do not feel that it can be said that the freedom from liability which it gives constitutes A PERSONAL DISABILITY. In *Anderson v. Shaffer*, 1929, 98 Cal. App. 457, it was held that a guarantor is entitled to avail himself of every defense inherent to the debt and not of a purely personal nature which his principal might have asserted. I feel that in this case Section 580b is a defense ‘inherent to the debt.’ The guaranty here involved was a specific promissory note which recited on its face that ‘This note is secured by a deed of trust.’ When the guaranty was given and accepted all parties were charged with notice of Section 580b and, since nothing to the contrary appears in the record, they must be presumed to have made their contract with its provisions in mind.

In 28 Cor. Jur. 909 this rule is laid down:

‘As the extent of the liability of the principal debtor generally measures and limits the liability of the guarantor, and a guaranty is dependent upon the existence of a principal obligation, as a general rule, where the principal contract and the guaranty thereof are parts of one entire [14] transaction so that there is as a matter of fact but one contract, if the principal contract, for reasons inherent in itself, is invalid, the guaranty partakes of the character of the principal contract, and is also invalid, as where the principal obligation was based on an insufficient or illegal consideration. Where the guaranty is given to the party to whom the instrument guaranteed is given, both the guaranty and the instrument *being* given under and in pursuance of the very same contract, there is, as a matter of fact, but one contract, the two instruments forming parts of it, and if one falls the other must necessarily go with it.’

The term ‘personal disability’ as it is used in Section 2810 of the Civil Code covers such things as the infancy of a debtor, the ultra vires contracts of a corporation, and the status, in some cases, of a married woman, but it does not apply, as I see it, to the freedom from liability which is accorded by Section 580b.

In passing it is interesting to note that in 1939 the Legislature, by amending Section 2787 of the Civil Code, abolished the distinction which had theretofore existed between sureties and guarantors in California. At the same time Section 2810, above quoted, was amended to read as follows:

‘A surety is liable, notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal; but he is not liable if for any other reason there is no liability upon the part of the principal at the time of the execution of the contract, or the liability of the principal thereafter ceases, unless the surety has assumed liability with knowledge of the existence of the defense. Where the principal is not liable because of mere personal disability, recovery back by the creditor of any res which formed all or part of the consideration for the contract shall have the effect upon the liability of the surety which is attributed to the recovery back of such a res under the law of sales generally.’

In a situation which is somewhat similar to the one here presented, where the seller of real property on a contract of sale repossessed the property upon default of the buyer and quieted his title as against the buyer, it was held that the seller could not thereafter recover anything from one who had guaranteed to the seller that the contract of sale

would be performed by the buyer. (*Beck v. Shepherd Fruit Co.* (1937) 19 Cal. App. (2) 590.)

I have carefully studied the able briefs filed by counsel for the claimant and the authorities therein cited but I find nothing which, in my judgment, is in conflict with the conclusions here reached.

In *Bank of America v. Hunter* (1937) 8 Cal. (2) 592, 598, the Court said that 'A reading of Section 580a, as added in 1933, discloses that its provisions have to do solely with actions for recovery of deficiency judgments on the [15] principal obligation after sale under trust deed or mortgage, as distinguished from a guarantor's obligation **SUCH AS IS HERE INVOLVED.**' The agreement of guaranty in that case was a continuing guaranty limited in amount but general in its nature in that it covered all advances made to the principal within the limits of the guaranty. It was not a specific guaranty of a trust deed note such as we have here. Furthermore, the provisions of Section 580b were not considered by the Court for the reason that the trust deed involved in the case was not a purchase money trust deed.

In *Loeb v. Christie* (1836) 6 Cal. (2) 416, the Court affirmed a judgment against the guarantor of a trust deed note notwithstanding the fact that the trust deed had not been foreclosed, but the Court, in commenting on the provisions of Section 2809, above quoted, emphasized that '**OUR CONCLUSION DOES NOT CAUSE THE GUARANTOR'S OBLIGATION TO BE ANY HEAVIER**

OR MORE BURDENSOME THAN THAT OF THE PRINCIPAL OR MAKER OF THE NOTE.'

In our case, as we have seen, we have come to the conclusion that to hold the guarantor liable would cause its obligation to be more burdensome than that of its principal.

Bank of America v. Goldberg (1936) 12 Cal. App. (2) 168, is not in point for it involves merely the right of the holder of a guaranteed mortgage note to recover from the guarantor notwithstanding the fact that the holder of the note had failed to file a claim on the note against the estate of the deceased principal or maker of the note.

In *Hillen v. Soule* (1935) 7 Cal. App. (2) 45, the Court sustained a judgment against the maker of a note secured by a second deed of trust given as part of the purchase price of real property notwithstanding the provisions of Section 580b for the reason that no sale had been made under the second deed of trust, the security having been entirely exhausted by the foreclosure of the first deed of trust. As I see it, this case is not in point here.

Counsel for claimant argues that it 'seeks to recover not a deficiency judgment but rather the enforcement of its right under the independent obligation of guaranty.' A 'deficiency' has been defined to be: 'A lack, shortage, or insufficiency. The difference between the total amount of the debt or payment meant to be secured by a mortgage and that realized on foreclosure and [16] sale when less than the total. A judgment or decree for the amount

of such deficiency is called a "deficiency judgment" or "decree." (Black's Law Dictionary, 2nd Ed. Page 345.) Conceding, as we have already seen, that if the subsidiary debtor was in fact a guarantor and not the real purchaser, that the claimant could have stood on its original claim here filed for the full amount of the balance of its unpaid note, without resorting to the security, covered by its deed of trust, nevertheless the fact remains that when it elected to foreclose it was bound to credit on its original claim the proceeds of the foreclosure sale which remained after the payment of fees, expenses, etc. Consequently, the claimant is now, in effect, attempting to collect, 'under the independent obligation of guaranty,' that which is 'the difference between the total amount of the debt meant to be secured by the deed of trust and that realized on foreclosure and sale.' In other words, the claimant is seeking to recover a 'deficiency judgment' against the guarantor.

The authorities which counsel for the claimant cited and which are not referred to in this memorandum do not, in my opinion, require any comment here.

Counsel for the Trustee will please prepare appropriate findings of fact, conclusions of law and order and submit the same to counsel for the other interested parties for approval as to form.

Dated: January 4, 1940.

BENNO M. BRINK

Referee in Bankruptcy"

And thereafter said Referee made his Findings of Fact and Conclusions of Law, as follows:

(Style of Cause)

“FINDINGS OF FACT AND CONCLUSIONS
OF LAW UPON THE PROOF OF DEBT
OF COAST FEDERAL SAVINGS AND
LOAN ASSOCIATION OF LOS ANGELES

The Objections of the Trustee to the Claim of Coast Federal Savings and Loan Association of Los Angeles came on regularly for hearing on the 25th day of October, 1939, in the Court room of Honorable Benno M. Brink, Referee in Bankruptcy, at the hour of 2:00 o'clock P. M. Evidence both oral and documentary was introduced and thereafter said hearing was continued to the 22nd day of November, 1939, at the hour of 2:00 o'clock P. M. before the Honorable [17] Benno M. Brink, Referee in Bankruptcy, and further evidence, both oral and documentary, was introduced and after hearing arguments of counsel, the matter was submitted for decision. The claimant was represented by its counsel, Crail, Crail and Crail, by Jacob Shearer, Esq.; R. M. Crawford, Trustee, personally appeared and was represented by his counsel Francis F. Quittner and William M. Rains; the Debtor and subsidiary debtors were represented by their counsel, Calvin L. Helgoe, Esq. The Referee having been fully advised in the premises, now, therefore, makes the following,

FINDINGS OF FACT:

I.

That it is true that R. M. Crawford, Trustee of the Estate of Wilton-Maxfield Management Company, formerly known as Wilton-Maxfield, Wright and Company, is not indebted in any amount whatsoever to Coast Federal Savings and Loan Association of Los Angeles on that certain Guaranty executed by Wilton-Maxfield, Wright and Company on August 12, 1937.

II.

That it is not true that any agreement of guaranty by Wilton-Maxfield Wright and Company of the payment of that certain note upon which Coast Federal Savings and Loan Association of Los Angeles has filed its claim herein is ultra vires.

III.

That it is not true that the officers of Wilton-Maxfield Management Company, formerly known as Wilton-Maxfield, Wright and Company, who endorsed the promissory note of Joseph Honey to Coast Federal Savings and Loan Association of Los Angeles, guaranteeing payment of said note, were without authority to execute such guaranty.

IV.

That it is true that the fair market value of the real property encumbered by said note and deed of trust upon which the said Coast Federal Savings and Loan Association of Los Angeles bases its

claim herein at the date of the sale of said property under said deed of trust, was in excess of the amount of the balance due on said note; that at the time of the sale of said real property under said deed of trust on July 15, 1939, the unpaid principal balance of said [18] note was \$5,754.33, together with interest thereon in the sum of \$460.44; that costs of the Coast Federal Savings and Loan Association of Los Angeles, as allowed by the above entitled Court in connection with the enforcement of said note and deed of trust, amounted to \$48.91 and attorneys' fees in connection therewith, as allowed by the above entitled Court, amounted to \$350.00. That at said time the fair market value of the real property incumbered by said note and deed of trust was \$7,250.00. That at said sale Coast Federal Savings and Loan Association of Los Angeles purchased the property for the sum of \$4,000.00. That on or about the 15th day of July, 1939, the sum of \$3,778.24, the proceeds of said sale, was credited to the debt of Coast Federal Savings and Loan Association of Los Angeles.

V.

That it is true that the claimant herein has been fully paid by reason of the sale of said real property under the powers and provisions of said deed of trust.

VI.

That it is true that there is no liability for a deficiency to said claimant against R. M. Crawford, Trustee for Wilton-Maxfield Management Com-

pany, formerly known as Wilton-Maxfield Wright and Company, and that it is true that the note and deed of trust upon which the claim herein was based was given to secure payment of the balance of the purchase price of the real property encumbered by said note and deed of trust.

VII.

That it is true that Joseph Honey, who signed the said note and deed of trust had no real interest in the said real property encumbered by said deed of trust and that he took title thereto only as a 'dummy' for the Wilton-Maxfield Management Company, formerly known as Wilton-Maxfield Wright and Company, and that it is true that this fact was known to the Coast Federal Savings and Loan Association of Los Angeles at the time the said note and guaranty were signed. [19]

CONCLUSIONS OF LAW

From the foregoing facts, the Court concludes, as matters of law, that:

R. M. Crawford, Trustee of Wilton-Maxfield Management Company, formerly known as Wilton-Maxfield Wright and Company, is not obligated in any sum or amount to Coast Federal Savings and Loan Association of Los Angeles on that certain guaranty executed by said Wilton-Maxfield, Wright and Company on August 12, 1937;

The proof of debt or claim of the Coast Federal Savings and Loan Association heretofore filed herein against R. M. Crawford, Trustee of Wilton-

Maxfield Management Company, formerly known as Wilton-Maxfield Wright and Company, one of the above named subsidiary debtors, must be disallowed.

Dated: Los Angeles, California, this 28th day of February, 1940.

BENNO M. BRINK

Referee in Bankruptcy

Approved as to form:

CRAIL, CRAIL AND CRAIL

By J. SHEARER

Attorneys for Claimant

CALVIN L. HELGOE

Calvin L. Helgoe

Attorney for Debtor and

Subsidiary Debtors

FRANCIS F. QUITTNER

WILLIAM M. RAINS

By WM. M. RAINS

Attorneys for Trustee.”

and his order disallowing appellant's claim, reading as follows:

(Style of Cause)

“ORDER DISALLOWING PROOF OF DEBT
AND CLAIM OF COAST FEDERAL SAV-
INGS AND LOAN ASSOCIATION OF LOS
ANGELES.

In the above entitled matter, Coast Federal Sav-ings and Loan Association having filed its Proof

of Debt against R. M. Crawford, Trustee of Wilton-Maxfield Management Company, formerly known as Wilton-Maxfield, Wright and Company, on a note secured by Deed of Trust upon the following described property: [20]

Lot Three (3) in Block Three (3) of the West Adams Heights, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 2 Pages 53 and 54 of Maps, in the office of the County Recorder of said County.

Except the South 30 feet of the East 15 feet thereof,

and R. M. Crawford, Trustee, having filed objections to the said claim, and the matter having been tried before the Honorable Benno M. Brink, Referee in Bankruptcy on the 25th day of October, 1939, and the 22nd day of November, 1939, and evidence both oral and documentary having been introduced, and claimant, Coast Federal Savings and Loan Association of Los Angeles, having been represented by its counsel Messrs. Crail, Crail and Crail, by Jacob Shearer, Esq.; R. M. Crawford, Trustee, having been represented by his counsel, William M. Rains and Francis F. Quittner, and the Debtor and Subsidiary Debtors having been represented by Calvin L. Helgoe, Esq., their counsel, and the matter having been argued and submitted to said Referee for decision and the said Referee being fully advised in the premises and

having made his Findings of Fact and Conclusions of Law,

Now, therefore, it is hereby ordered, adjudged, and decreed that the Proof of Debt for Claim of Coast Federal Savings and Loan Association of Los Angeles against R. M. Crawford, Trustee of Wilton-Maxfield Management Company, formerly known as Wilton-Maxfield, Wright and Company, on note in the principal sum of \$5,754.33 executed on the 11th day of August, 1937, by Joseph Honey and guaranteed by Wilton-Maxfield, Wright and Company, secured by Deed of Trust upon the above described real property, be and it is hereby disallowed.

Dated this 28th day of February, 1940.

BENNO M. BRINK

Referee in Bankruptcy

Approved as to form:

CRAIL, CRAIL AND CRAIL

By J. SHEARER

Attorneys for Claimant

CALVIN L. HELGOE

Calvin L. Helgoe

Attorney for Debtor and

Subsidiary Debtors

FRANCIS F. QUITTNER

WILLIAM M. RAINS

By WM. M. RAINS

Attorneys for Trustee" [21]

That at said hearing appellant made timely objection to evidence relating to the appraised value of the real estate covered by the Deed of Trust attached to the Proof of Debt and to evidence relating to the question of whether or not Joseph Honey took title as a "dummy" for debtor corporation, Wilton-Maxfield Management Company. In this connection, Trustee's Exhibits 1, 2, 3, 4 and 6 are hereinafter set forth:

EXHIBIT No. 1

"Coast Federal Savings & Loan Association
Los Angeles

Joe Crail,
President

Second Floor, Merritt Building
Eighth and Broadway
Michigan 4343

July 31, 1937

Mr. Hugh Wilton,
3852 Wilshire Boulevard,
Los Angeles, California.

Dear Sir:

We hereby confirm our sale and your purchase of the property located at 2218 South Hobart, Los Angeles, for a consideration of \$7000.00, \$700.00 to be the down payment, which is hereby acknowledged in the form of your Check No. 10086, dated July 27th, in the amount of \$250.00, and another Check No. 10092, dated July 30th, in the amount

of \$450.00, both checks being signed by Hugh Wilton, Trustee. Said property is more particularly described as follows:

Lot 3 in Block 3 of the West Adams Heights, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in book 2, pages 53 and 54 of maps, in the office of the County Recorder of said County;

Except the South 30 feet of the East 15 feet thereof.

Title to be shown in the name of Joseph Honey, a single man. The firm of Wilton, Maxfield, Wright and Company will guarantee the note, which will bear interest as of date escrow closes.

The balance due, covering the purchase price of this property, in the amount of \$6300.00, is to be evidenced and payable by a note in the amount of \$6300.00, secured by a Deed of Trust, payable \$300.00 thirty days from date of said note, and \$60.00 per month thereafter, including interest at the rate of 6% per annum until the whole amount of \$6300.00 has been paid in full. [22]

In accordance with your letter of July 30, 1937, you are not to be paid any commission covering this sale, but, confirming arrangements made with Mr. A. M. Bacon, we are to pay him a commission of \$175.00 through you as a Real Estate Broker, it being understood that Mr. Bacon is licensed as a Real Estate Salesman under your Broker's License. It is understood that you will advance the above

mentioned commission to Mr. Bacon at the close of escrow. If so, same may be deducted from your first monthly payment of \$300.00, as specified in the above mentioned note.

The above transaction is conditioned upon a satisfactory credit report covering the signors of the said note and of the guarantors of said note.

For your information, we have ordered search of title, and when advised by the Title Company that they are ready to file this Deed of Trust, we will advise you to have Joseph Honey come in and sign the note and deed of trust, together with Escrow instructions, and, at the same time, secure the guarantee of the note by Wilton, Maxfield, Wright and Company.

Yours truly,

COAST FEDERAL SAVINGS
AND LOAN ASSOCIATION
OF LOS ANGELES

By J. E. HOLADAY

Assistant to the President"

EXHIBIT No. 2

“Coast Federal Savings & Loan Association
Los Angeles

Joe Crail,
President

Second Floor, Merritt Building
Eighth and Broadway
Michigan 4343

August 13, 1937

Mr. Hugh Wilton,
c/o Wilton, Maxfield Wright & Co.
3852 Wilshire Blvd.,
Los Angeles, Calif.

Dear Sir:

In connection with property which we are selling to Joseph Honey, we enclose copy of escrow instructions for your files.

We also enclose estimate of Honey's charges, showing \$11.00 due from him. May we have your check for this amount. [23]

You will notice that escrow instructions call for the buyer to deposit fire insurance. May we therefore have your policy, for at least \$6300, insuring Joseph Honey, a single man, with loss payable clause to Coast Federal Savings and Loan Association of Los Angeles, as per the special form enclosed. Said policy should also contain 8 point coverage and the legal description of the property. We will also require a receipt, showing the premium to be paid.

Upon receipt of these items, we will apparently be in a position to complete this escrow.

Yours very truly,

MILDRED HOUSE

MH

Mildred House"

EXHIBIT No. 3

(Only the material parts of this Exhibit are set forth)

"Coast Federal Savings & Loan Association
of Los Angeles

Buyer & Seller

Escrow No.....

Escrow Instructions

August 8th 1937

Buyer

To Coast Federal Savings & Loan Association of
Los Angeles:

I will hand you \$6300.00 trust deed and have paid \$700.00 outside of escrow.

Memo.

Paid outside of Escrow.....\$

Cash through Escrow.....\$700.00

Encumbrances of record.....

New Encumbrances 630.00

Total consideration 7000.00

I will also hand you before the time limit hereinafter named any instruments, including notes

secured by encumbrances I create, and additional funds required from me to enable you to comply with these instructions, all of which you are authorized and instructed to deliver provided on or before 9-11 1937, instruments have been filed for record entitling you to procure for me assurance of title in the form of a Owner's or Joint Protection policy of title insurance with liability of issuing title company limited to not less than \$7000.00 (if a continuation Guarantee or Certificate is procured said liability shall apply to it only) on the following described real property in the City of Los Angeles, County of Los Angeles, State of California, viz.:

[24]

Lot 3 in Block 3 of the West Adams Heights except the south 30 feet of the east 15 feet thereof as per map recorded in Book 2, Page 53 & 54 of Maps Records of said County: showing title vested in Joseph Honey, a single man Free of encumbrances except: all Taxes for fiscal year 1937-38.

* * * * *

Trust Deed securing Note for \$6300.00, dated 8-11-37 due (if straight note) in favor of Coast Federal Savings and Loan Association of Los Angeles, a corporation or order at Los Angeles, Calif. with interest from close of escrow at the rate of six per cent per anum, payable *inc* in monthly installments, principal and interest in installments of \$60.00 on the 15th day of each month, beginning on the 15th day of October, 1937 executed by above named Grantee and continuing until paid, with an additional payment of \$300.00 due on the principal of

said note on September 15, 1937. Said note is to be guaranteed by Wilton, Maxfield, Wright and Company.

* * * * *

Each of the undersigned states he has read the foregoing instructions and understands and agrees to them.

Signature

JOSEPH HONEY

Seller

8-11 1937

The foregoing terms, provisions, conditions and/or instructions are hereby approved and accepted in their entirety and concurred in by me; I will hand you all instruments necessary to enable you to comply, including a deed of the property described, executed by Coast Federal Savings and Loan Association of Los Angeles which you are authorized to use, provided that within the time limit hereinbefore specified you hold in this escrow for the account of the parties executing said deed the money, if any, payable through this escrow by the buyer as provided on page 1 of these instructions, and any pro-rata of insurance premium, or other adjustments, and any instruments deliverable to me under the buyer's instructions. Pay at close of escrow the following items, for which I will hand you additional funds, on demand, if necessary; any sum [25] necessary to pay my pro-rata of taxes, assessments, bonds, interest or rents as demanded by the said instructions of the buyer, and the following: Pay commission of \$175.00 to Hugh Wilton

for the account of A. M. Bacon * * * whose address is 3852 Wilshire Blvd., L A which commission is not to be paid at the time papers are recorded, but is to be withheld until the \$300 which becomes due on September 15, 1937. If, at that time, a receipt is submitted indicating that this \$175.00 has been actually paid advanced by Hugh Wilton to A. M. Bacon, the \$175.00 is to be applied on the \$300.00 payment. Otherwise, the \$175.00 is to be paid over at that time in the form of a check made payable to Hugh Wilton, for the account of A. M. Bacon. Draw deed. Pay sales for lighting maintenance, ctf. No. 371 and Assm. 57. We acknowledge receipt of \$700.00 received outside of escrow.

You will, as my agent, assign any fire insurance of mine handed you for use in this escrow.

* * * * *

Issue your check for balance to Coast Federal Savings and Loan Association of Los Angeles.

Each of the undersigned states that he has read the foregoing instructions and understands and agreed to them.

COAST FEDERAL SAVINGS
AND LOAN ASSOCIATION
OF LOS ANGELES

Name By JOE CRAIL
President

Name By IRWIN KELLOGG
Secretary"

[Corporation Seal]

EXHIBIT No. 4

“Coast Federal Savings & Loan Association
Los Angeles

Joe Crail,
President

Second Floor, Merritt Building
Eighth and Broadway
Michigan 4343

August 21, 1937

Mr. Hugh Wilton,
c/o Wilton, Maxfield, Wright & Co.,
3852 Wilshire Blvd.,
Los Angeles, Calif.

Re Our Loan #1055

[26]

Dear Sir:

We have completed our above escrow covering the sale of property to Joseph Honey. We wish to advise that the charge for recording trust deed was \$3.30, instead of \$2.50, as estimated by us, and we, therefore, ask that Mr. Honey furnish us with 80¢ covering this difference.

Deed has been recorded and will be returned direct from the County Recorder's Office *with* a week or ten days.

Policy of title insurance has been issued in accordance with instructions, and is held by us in connection with our \$6300.00 loan on this property.

We enclose herewith pass book in connection with this loan, and wish to advise that the sum of \$300.00

is due on September 15, 1937. Inasmuch as monthly payments of \$60.00 are due on the 15th of every month, beginning October 15, 1937, no notices will be sent.

Very truly yours,

COAST FEDERAL SAVINGS
AND LOAN ASSOCIATION
OF LOS ANGELES,

MH:FE

Enc.

By IRWIN KELLOGG''

EXHIBIT 6

(This exhibit includes six checks)

“No. 223

Wilton, Maxfield, Wright & Co.
3852 Wilshire Blvd.

Los Angeles, 11-15 1937

Pay to the Order of Coast Federal Svgs & Loan
Ass'n.....\$60 00/100

Registered 189156.....60 Dol's 00 Cts Dollars

WILTON, MAXFIELD, WRIGHT & CO.

By HUGH M. WILTON

President

By C. TAYLOR

Secretary''

Endorsement by payee acknowledges payment in full of account itemized below

Description	Amount
Prin	2.70
Interest	57.30

Sixth & Oxford Branch
 Security-First National
 Bank of Los Angeles
 3900 West Sixth
 Los Angeles
 16-83

[27]

“No. 224

Wilton, Maxfield, Wright & Co.
 3852 Wilshire Blvd.
 Los Angeles, 11-15-1937

Pay to the Order of Coast Federal Svgs. & Loan
 Ass'n.....\$60 00/100

Registered 189156.....60 Dol's 00 Cts Dollars

WILTON, MAXFIELD, WRIGHT & CO.

By Hugh M. WILTON

President

By C. TAYLOR

Secretary”

Endorsement by payee acknowledges payment in
 full of account itemized below

Description	Amount
Sixth & Oxford Branch Security-First National Bank of Los Angeles 3900 West Sixth Los Angeles 16-83	

“No. 261

Wilton, Maxfield, Wright & Co.
3852 Wilshire Blvd.

Los Angeles, 12-1 1937

Pay to the Order of Coast Federal & Svgs.

Loan.....\$60 00/100

Registered 189156.....60 Dol's 00 Cts Dollars

WILTON, MAXFIELD, WRIGHT & CO.

By HUGH M. WILTON

President

By C. TAYLOR

Secretary”

Endorsement by payee acknowledges payment in full of account itemized below

Description	Amount
-------------	--------

Hobart

Sixth & Oxford Branch

Security-First National

Bank of Los Angeles

3900 West Sixth

Los Angeles

16-83

"No. 296

Wilton, Maxfield, Wright & Co.

3852 Wilshire Blvd.

Los Angeles, 1-1 1938

Pay to the Order of Coast Federal Loan

& Svgs.....\$60 00/100

Registered 189156.....60 Dol's 00 Cts Dollars

WILTON, MAXFIELD, WRIGHT & CO.

By HUGH M. WILTON

President

By C. TAYLOR

Secretary"

Endorsement by payee acknowledges payment in
full of account itemized below

Description	Amount
-------------	--------

Hobart	
--------	--

Sixth & Oxford Branch

Security-First National

Bank of Los Angeles

3900 West Sixth

Los Angeles

16-83

[28]

Wilton, Maxfield, Wright & Co.

“No. 320

Wilton, Maxfield, Wright & Co.

3852 Wilshire Blvd.

Los Angeles, 2-1 1938

Pay to the Order of Coast Federal & Svc

Loan.....\$60 00/100

Registered 189156.....60 Dol's 00 Cts Dollars

WILTON, MAXFIELD, WRIGHT & CO.

By HUGH M. WILTON

President

By C. TAYLOR

Secretary”

Endorsement by payee acknowledges payment in full of account itemized below

Description	Amount
-------------	--------

Hobart

Sixth & Oxford Branch

Security-First National

Bank of Los Angeles

3900 West Sixth

Los Angeles

16-83

"No. 453

Wilton, Maxfield, Wright & Co.
3852 Wilshire Blvd.

Los Angeles, 4-15th 1938

Pay to the Order of Coast Federal Savings & Loan
Ass.....\$240.00

Two Hundred Forty and no/100 Dollars

WILTON, MAXFIELD, WRIGHT & CO.

By HUGH M. WILTON

President

By C. TAYLOR

Secretary."

Endorsement by payee acknowledges payment in
full of account itemized below

Description	Amount
March 15	60
April 15	60
May 15	60
June 15	60
	<hr/>
	240

Sixth & Oxford Branch
Security-First National
Bank of Los Angeles
3900 West Sixth
Los Angeles
16-83

Endorsement of all checks in Exhibit 6 evidence
receipt of payment by appellant.

That on March 7, 1940, and within the time set forth in Section 39(c) of the Bankruptcy Act, appellant filed with said Referee its Petition for Review; that said Referee duly filed with the Court his certificate on Petition for Review, which reads as follows:

(Style of Cause)

“REFEREE’S CERTIFICATE ON PETITION
FOR REVIEW

To the Honorable, William P. James, Judge of the
above entitled Court: [29]

I, Benno, M. Brink, one of the Referees in Bankruptcy of this Court, before whom the above entitled proceedings are pending, do hereby certify to the following:

Coast Federal Savings and Loan Association of Los Angeles has duly filed its Petition for Review from an order made by your Referee in this matter on February 28, 1940.

The Proceedings

The proceedings leading up to the making of the aforesaid order commenced by the filing of a claim in this matter by the petitioner on review. In due season, R. M. Crawford, the trustee in this matter, filed objections to the said claim. A hearing was duly had on the said objections and after considering the briefs filed by counsel in the case your Referee made his order disallowing the said claim. It is this order which is here in controversy.

The Questions Presented

The several questions presented in this matter are set forth in detail in the Memorandum of Decision which your Referee wrote on January 4, 1940, and which is going up with this Certificate.

The Evidence

The evidence in this matter is set forth in detail in the transcript of the proceedings which is going up with this Certificate and in the exhibits which are hereinafter mentioned.

Findings of Fact and Conclusions of Law

Your Referee's Findings of Fact and Conclusions of Law in this matter are set forth in the instrument captioned 'Findings of Fact and Conclusions of Law Upon the Proof of Debt of Coast Federal Savings and Loan Association of Los Angeles', which is going up with this Certificate.

The Order

Your Referee's order in this matter is contained in the instrument captioned 'Order Disallowing Proof of Debt and Claim of Coast Federal Savings and Loan Association of Los Angeles', which is going up with this Certificate. [30]

Papers Submitted

I hand up for the information of the Court the following papers:

1. Objection to the claim of Coast Federal Savings and Loan Association of Los Angeles.

2. Transcript of testimony and proceedings on objections to claim of Coast Federal Savings and Loan Association, heard on November 22, 1939.

3. The following exhibits:

Trustee's Exhibit No. 1—Letter from Coast Federal Savings & Loan Association of Los Angeles to Mr. Hugh Wilton, dated July 31, 1937.

Trustee's Exhibit No. 2—Letter from Mildred House to Mr. Hugh Wilton, dated August 13, 1937, on stationery of Coast Federal Savings & Loan Association of Los Angeles.

Trustee's Exhibit No. 3—Escrow instructions.

Trustee's Exhibit No. 4—Letter from Coast Federal Savings and Loan Association of Los Angeles to Mr. Hugh Wilton, dated August 21, 1937.

Trustee's Exhibit No. 6—Six cancelled checks issued by Wilton, Maxfield, Wright & Co. to Coast Federal Savings and Loan Association.

(Note: Trustee's Exhibit No. 5 is the Affidavit of John A. Westram filed in this matter on December 15, 1938, and received in evidence in this proceeding by reference.)

4. Memorandum of Points and Authorities in support of claim of Coast Federal Savings and Loan Association of Los Angeles, filed December 1, 1939.

5. Trustee's reply Memorandum of Points and Authorities, filed December 6, 1939.

6. Reply memorandum of Trustee's Points and Authorities, filed December 11, 1939.

7. Reply of Coast Federal Savings and Loan Association of Los Angeles, filed December 12, 1939.

8. Memorandum of Decision.

9. Findings of Fact and Conclusions of Law upon the proof of debt of Coast Federal Savings and Loan Association of Los Angeles.

10. Order Disallowing Proof of Debt and Claim of Coast Federal Savings and Loan Association of Los Angeles.

11. Petition to review order of Referee.

(Note: The claim which is here in controversy is in the possession of R. M. Crawford, the Trustee. A copy thereof and a copy of the instrument filed herein by the claimant captioned 'Notice of Partial Payment of Debt' [31] are attached to the aforesaid Petition to Review Order of Referee.)

Respectfully submitted this 12th day of March 1940.

BENNO M. BRINK

Referee in Bankruptcy

Copies to Mr. Quittner,
Wm. M. Rains
Crail, Crail & Crail''

(Exhibits to this Petition are omitted for the reason that the material exhibits appear elsewhere in this Statement.)

That thereafter said Petition came on for hearing on April 1, 1940, before Honorable Wm. P. James, Judge of said Court, and was by stipulation submitted upon written memoranda; that on April 18, 1940, said Court made its order confirming and approving the order of Referee Benno M. Brink dated February 28, 1940, disallowing appellant's claim and said order of Judge James was entered upon his minutes on April 18, 1940, which reads as follows:

“This matter having come on before the Court on review of Referee's order disallowing proof of debt and claim of Coast Federal Savings and Loan Association of Los Angeles; and counsel for the respective parties having submitted in writing their several arguments; and the Court now having duly considered the matter at issue, determines that the order of the Referee and his report thereon should be, and it is, confirmed and approved. An exception is noted in favor of Coast Federal Savings and Loan Association.”

That on April 26, 1940, appellant filed its Notice of Appeal, which reads as follows:

(Style of Cause)

“NOTICE OF APPEAL

To: Honorable Wm. P. James, Judge of the District Court of the United States for the Southern District of California, Central Division;

R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, Central Division; Honorable Benno M. Brink, Referee in Bankruptcy; [32] R. M. Crawford, Trustee, and to Francis F. Quittner and William M. Rains, his Attorneys; Maxfield-Wilton & Associates, Inc., a corporation, Debtor, Residential Income Properties, Inc., a corporation, Subsidiary Debtor, and Wilton-Maxfield Management Company, a corporation, Subsidiary Debtor, and to Calvin L. Helgoe, their Attorney; Securities and Exchange Commission, and to C. E. Johnson, its Attorney:

You, and each of you, will please take notice that the creditor, Coast [32a] Federal Savings and Loan Association of Los Angeles, a corporation, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Order Disallowing Proof of Debt and Claim of Coast Federal Savings and Loan Association of Los Angeles, dated February 28th, 1940, denying the claim of Coast Federal Savings and Loan Association of Los Angeles in the sum of \$2,835.44, and from the order of Honorable Wm. P. James, Judge of the United States District Court for the Southern District of California, Central Division, dated April 18th, 1940, confirming the said order of Honorable Benno M. Brink, Referee in Bankruptcy; said order of Honorable Wm. P. James was dated April

18th, 1940, and was entered in the Minutes of said Honorable Wm. P. James on April 18th, 1940.

Dated April 26th, 1940.

CRAIL, CRAIL AND CRAIL

By J. SHEARER

Attorneys for creditor, Coast Federal
Savings and Loan Association of Los
Angeles''

And said Notice of Appeal was duly served upon all persons entitled to service thereof.

STATEMENT OF POINTS TO BE RELIED
UPON BY APPELLANT

It is appellant's contention that the transaction on which the claim is based involves as against the debtor a simple contract of guarantee of the note made by Honey and which note was secured by Deed of Trust. Trustee and debtor's defense is based upon the following grounds which were included in the Trustee's Objections:

1. That the estate is not indebted;
4. That there is no unpaid deficiency on the note for the reason that the fair market value of the real property at the time of the sale was in excess of the total amount of the indebtedness;
5. That the claimant has been fully paid by reason of its foreclosure;

6. That there is no liability here for a deficiency by reason of the provisions of Section 580b of the Code of Civil Procedure of the State of [33] California, since the note was given by the maker as the balance of the purchase price of the real property covered by the deed of trust.

Grounds 2 and 3, which were originally set forth as defenses in the Trustee's Objections, were not recognized by the Referee and no request was made to review his findings in that connection.

In reply to these defenses raised by said Code sections, it is appellant's contention that the sections apply only as to "deficiency judgments", and it is the further contention of appellant that the Supreme Court of the State of California has interpreted the sections and "deficiency judgments" as excluding actions upon a guarantee of a note even though it be secured by Deed of Trust and even though the action be for the balance owing upon the note after a credit is given to the extent of the proceeds of the purchase price of the real property at the time of the sale thereof under the Deed of Trust.

The further question may arise whether, notwithstanding the contract of the note and deed of trust, and the guarantee endorsed upon the note, the Court may nevertheless treat the debtor corporation, which signed the guarantee, as the real maker of the note, when the trial court found from the evidence that the party who signed the note as

maker had no real interest in the property and took title thereto only as a "dummy" for the debtor, which fact was known to the claimant when the transaction was entered into, and whether by so doing the court can thereby bring the debtor within Sections 580a and 580b of the Code of Civil Procedure of the State of California.

CRAIL, CRAIL AND CRAIL

By J. SHEARER

Attorneys for Coast Federal
Savings and Loan Association
of Los Angeles

WM. M. RAINS and

FRANCIS F. QUITTNER

By WM. M. RAINS

Attorneys for the Trustee
CALVIN L. HELGOE
Attorney for Debtors and
Subsidiary Debtors.

With the order appealed from, inserted on foregoing Page 32.

The above statement is approved: July 19, 1940.

WM. P. JAMES

Judge of the District Court
of the United States in and
for the Southern District
of California, Central Division.

[Endorsed]: Filed July 19, 1940. [34]

[Title of District Court and Cause.]

STIPULATION

It is stipulated by and between counsel, Francis F. Quittner and William M. Rains, Attorneys for R. M. Crawford, Trustee, Calvin L. Helgoe, Attorney for Debtor and Subsidiary Debtors, and Crail, Crail & Crail, Attorneys for Coast Federal Savings and Loan Association of Los Angeles, that the time for filing the record on appeal and docketing the action in pursuance to the Notice of Appeal of the Coast Federal Savings and Loan Association of Los Angeles, dated April 26th, 1940, and filed April 26th, 1940, in the above entitled matter, may be extended to and including July 15th, 1940.

CRAIL, CRAIL AND CRAIL

By J. SHEARER

Attorneys for Coast Federal
Savings and Loan Association
of Los Angeles [36]

FRANCIS F. QUITTNER and

WILLIAM M. RAINS

By WILLIAM M. RAINS

Attorneys for R. M. Crawford,
Trustee.

CALVIN L. HELGOE

Attorney for Debtor and
Subsidiary Debtors.

Pursuant to the foregoing Stipulation, it is ordered that the time for filing the record on appeal and docketing the action in pursuance to the Notice of Appeal of the Coast Federal Savings and Loan Association of Los Angeles, be extended to and include July 15, 1940.

Dated: June 1, 1940.

WM. P. JAMES

Judge

[Endorsed]: Filed June 1, 1940. [37]

[Title of District Court and Cause.]

STIPULATION

It is stipulated by and between counsel, Francis F. Quittner and William M. Rains, Attorneys for R. M. Crawford, Trustee, Calvin L. Helgoe, Attorney for Debtor and Subsidiary Debtors, and Crail, Crail and Crail, Attorneys for Coast Federal Savings and Loan Association of Los Angeles, that the time for filing the record on appeal and docketing the action in pursuance to the Notice of Appeal of the Coast Federal Savings and Loan Association of Los Angeles, dated April 26, 1940, and filed April 26, 1940, in the above entitled matter, which was heretofore extended to July 15th,

1940, may be extended to and including July 24th, 1940.

CRAIL, CRAIL AND CRAIL

By J. SHEARER

Attorneys for Coast Federal
Savings and Loan Associa-
tion of Los Angeles [39]

FRANCIS F. QUITTNER and
WM. M. RAINS

By WM. M. RAINS

Attorneys for R. M. Craw-
ford, Trustee.

CALVIN L. HELGOE

Attorney for Debtor and
Subsidiary Debtors.

Pursuant to the foregoing Stipulation, it is ordered that the time for filing the record on appeal and docketing the action in pursuance to the Notice of Appeal of the Coast Federal Savings and Loan Association of Los Angeles, which was heretofore extended to July 15th, 1940, may be extended to and include July 24th, 1940.

Dated July 12, 1940.

WM. P. JAMES

Judge

[Endorsed]: Filed Jun. 12, 1940. [40]

[Title of District Court and Cause.]

ORDER EXTENDING TIME

Good cause appearing therefor, it is ordered that the time for filing the record of appeal and docketing the action in pursuance to the Notice of Appeal of Coast Federal Savings and Loan Association of Los Angeles, a corporation, which was heretofore extended to July 24, 1940, is now extended to and including July 25, 1940.

Dated: July 24, 1940.

WM. P. JAMES

Judge [42]

Received copy July 24, 1940.

CALVIN L. HELGOE

by B. D.

Received copy July 24, 1940.

WM. M. RAINS &

FRANCIS F. QUITTNER

By WM. M. RAINS. [43]

[Title of District Court and Cause.]

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 43, inclusive, contain original Agreed Statement of the Case on Appeal and three Orders Extending Time, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$1.40, and that said amount has been paid me by the Appellant herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 24th day of July, A. D. 1940.

[Seal] R. S. ZIMMERMAN,
 Clerk
By EDMUND L. SMITH,
 Deputy Clerk.

[Endorsed]: No. 9579. United States Circuit Court of Appeals for the Ninth Circuit. Coast Federal Savings and Loan Association of Los Angeles, a corporation, Appellant, vs. R. M. Crawford, Trustee in Bankruptcy of the Estates of Maxfield-Wilton & Associates, Inc., a corporation, Debtor, Residential Income Properties, Inc., a corporation, Subsidiary Debtor, and Wilton-Maxfield Management Company, a corporation, Subsidiary Debtor; Maxfield-Wilton & Associates, Inc., Residential Income Properties, and Wilton-Maxfield Management Company, and Securities and Exchange Commission, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 25, 1940.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 9579

COAST FEDERAL SAVINGS AND LOAN AS-
SOCIATION OF LOS ANGELES, a corpo-
ration,

Appellant,

vs.

R. M. CRAWFORD, Trustee of Maxfield-Wilton &
Associates, Inc., a corporation, Debtor, Resi-
dential Income Properties, Inc., a corporation,
Subsidiary Debtor, Wilton-Maxfield Manage-
ment Company, a corporation, Subsidiary Deb-
tor, MAXFIELD-WILTON & ASSOCIATES,
INC., a corporation, Debtor, RESIDENTIAL
INCOME PROPERTIES, INC., a corpora-
tion, Subsidiary Debtor, WILTON-MAX-
FIELD MANAGEMENT COMPANY, a cor-
poration, Subsidiary Debtor,

Appellees.

DESIGNATION AND STATEMENT OF
POINTS ON APPEAL

Pursuant to Rule 19, Sub-section 6, of the Circuit
Court of Appeals,

1. Appellant designates as that portion of the
record, proceedings and evidence to be contained in
the record on appeal, the Agreed Statement and
the matters contained therein, heretofore signed by
all counsel for appellant and all appellees.

2. Appellant refers to the "Statement of Points" to be relied upon by appellant as contained in said Agreed Statement as the Statement of Points upon which it intends to rely on appeal.

Dated: July 24, 1940.

CRAIL, CRAIL AND CRAIL
By J. SHEARER
Attorneys for Appellant.

Received copy of the above Designation this 24th day of July, 1940.

WM. M. RAINS and
FRANCIS F. QUITTNER
By WM. M. RAINS
Attorney for R. M. Crawford,
Trustee, etc., Appellees.

Received copy of the above Designation this 24th day of July, 1940.

CALVIN L. HELGOE by B I
Attorney for Maxfield-Wilton
& Associates, Inc., a corp.,
Debtor; Residential Income
Properties, Inc., a corp., Sub-
sidiary Debtor; Wilton-Max-
field Management Co., a corp.,
Subsidiary Debtor.
Appellees.

[Endorsed]: Filed July 25, 1940. Paul P.
O'Brien, Clerk.